UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ARI WEITZNER, M.D., P.C., Individually and on Behalf :   05 CV 2530 (ARR)
of All Others Similarly Situated.   :

                                                          :   NOT FOR ELECTRONIC
                              Plaintiff,   :   OR PRINT
                                                          :   PUBLICATION

        -against-   :

                                                          :   OPINION AND ORDER
MICRO-MED, INC.,   :

                                                          :
                              Defendant.   X
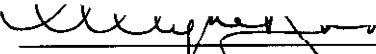

ROSS, United States District Judge:

Plaintiff filed a complaint in this putative class action on May 24, 2005, invoking the

court's diversity jurisdiction and alleging violations of the Telephone Consumer Protection Act

("TCPA"), 47 U.S.C. § 227(b)(1)(C), and the applicable regulation, 47 C.F.R. § 64.1200(a)(3).

By exchange of letters, the parties indicated to the court that two cases currently pending

before the Second Circuit raise the question whether federal courts have diversity jurisdiction

over TCPA actions. Judge Glasser's decision in Gottlieb v. Carnival Corp., 367 F.Supp.2d 301

(E.D.N.Y. 2005), is before the Court of Appeals under docket number 05-2733 and may be

argued as early as October of this year. Chief Judge Korman also recently certified an

interlocutory appeal in Saporito v. Vision Lab Telecommunications, Inc., No. 05 Civ. 1007

(ERK) (E.D.N.Y. July 8, 2005), so that the Court of Appeals could decide whether federal

courts have diversity jurisdiction to hear TCPA claims. In light of these pending appeals that

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present a controlling question of law, the court hereby stays the instant proceedings until the

Second Circuit has issued its decision in Gottlieb.

SO ORDERED.

Allyne R. Ross
United States District Judge

Dated: August 16, 2005
Brooklyn, New York

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